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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120208116-2115-01]

RIN 0648-BB83

Fisheries of the Northeastern United States; Proposed 2012-2013 Northeast Skate Complex Fishery Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes catch limits and associated measures for the Northeast Skate Complex Fishery for the 2012-2013 fishing years. The proposed action was developed by the New England Fishery Management Council pursuant to the provisions of the Northeast Skate Complex Fishery Management Plan. The proposed catch limits are supported by the best available scientific information and reflect recent increases in skate biomass.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: An environmental assessment (EA) was prepared that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New

England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

You may submit comments, identified by NOAA-NMFS-2012-0015, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, and then enter “NOAA-NMFS-2012-0015” in the keyword search. Locate the document you wish to comment on from the resulting list, and click on the “Submit a Comment” icon on the right of that line.
- Fax: (978) 281-9135, Attn: Tobey Curtis.
- Mail: Daniel Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Skate Specifications.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter, little, thorny, barndoor, smooth, clearnose, and rosette. The Council's Scientific and Statistical Committee (SSC) reviews the best available information on the status of skate populations and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

Amendment 3 to the Skate FMP was implemented in July 2010 (75 FR 34049, June 16, 2010). It instituted an annual catch limit (ACL) and accountability measures (AMs) for the skate fishery, created an annual review and specifications process, and set fishery specifications for the 2010-2011 fishing years (through April 30, 2012). The ACL was set equal to the ABC recommendation of the SSC (41,080 metric tons (mt)). Amendment 3 also implemented an annual catch target (ACT), which is 75 percent of the ACL, and annual total allowable landings (TALs) for the skate wing and bait fisheries ($TAL = ACT - \text{dead discards and state landings}$), three seasonal quotas for the bait fishery, and possession limits in each fishery. Skate wing possession limits were subsequently modified by Framework Adjustment 1 (76 FR 28328, May 17, 2011).

In June 2011, the SSC gave the Council a new recommendation for skate ABC to be used for the 2012-2013 fishing years (50,435 mt). The proposed specifications reflect the best available scientific information on skates. The ABC is calculated by multiplying the median catch/biomass ratio by the most recent 3-year average skate biomass from the NMFS bottom trawl survey. A calibration workshop was conducted in early 2011 to determine the best method to calibrate skate survey biomass between the new survey vessel, Henry B. Bigelow, and the retired vessel, Albatross IV. The workshop resulted in minor updates to skate overfishing definitions (described below). Significant increases in the survey biomass of little and winter skates through autumn 2010 supported increases in the ABC recommendation. Additionally, new research on the discard mortality of winter and little skates in trawl gear indicates that the assumed discard mortality rate of 50 percent is too high, and that the dead discard portion of the catch has been overestimated in the past. Updates to estimates on state waters and transfer at sea landings were also incorporated.

In light of the significant increase in ABC, the Council requested that NMFS implement the revised catch limits through a Secretarial emergency action for the remainder of the 2011 fishing year. NMFS reviewed the Council's request and published a final rule on November 28, 2011, implementing increases in ABC, ACL, ACT, and TALs (76 FR 66856, October 28, 2011). The emergency action provided an otherwise unavailable economic opportunity by allowing the fishery to harvest more skates and have a longer fishing season during the 2011 fishing year. This also helped avoid the detrimental economic impacts that would have been associated with possibly closing the skate fisheries in the absence of the emergency action. These proposed specifications are intended to replace the measures implemented by the 2011 emergency action (which expire April 30, 2012), but are similar to the emergency action measures in most cases.

Proposed Measures

Based on the June 2011 ABC recommendation from the SSC, the Council proposed the following specifications for the skate fishery for the 2012-2013 fishing years:

1. that the skate ABC and ACL be specified at 50,435 mt;
2. that the ACT be specified at 37,826 mt;
3. that the TAL be specified at 23,365 mt (the skate wing fishery would be allocated 66.5 percent of the TAL (15,538 mt) and the skate bait fishery would be allocated 33.5 percent of the TAL (7,827 mt));
4. that the skate bait possession limit be increased from 20,000 lb (9,072 kg) to 25,000 lb (11,340 kg) whole weight per trip for vessels carrying a valid Skate Bait Letter of Authorization; and,
5. that the skate wing possession limits be reduced from 2,600 lb (1,179 kg) to 2,200 lb (998 kg) wing weight per trip for Season I (May 1 through August 31), and decreased from 4,100 lb (1,860 kg) to 3,600 lb (1,633 kg) wing weight per trip for Season II (September 1 through April 30).

As described in the 2011 emergency action, the Council-recommended TAL uses an inappropriately low estimate of state water landings that must be deducted from the ACT (3 percent of total landings). More recent analyses using a more accurate definition of state water landings indicate that the 2007-2009 average state water landings were approximately 6.7 percent of total landings. Therefore, this action proposes to use the same TAL specified in the emergency action (21,561 mt), rather than the slightly higher TAL proposed by the Council and described above. This would effectively keep the skate TALs and associated quotas at status quo

levels through the 2013 fishing year (Table 1). This TAL is 56 percent greater than the 2010 and initial 2011 TAL (no action alternative), continuing higher allowable harvest levels for skates.

This rule proposes minor reductions to the skate wing possession limits in an effort to avoid implementation of the incidental skate wing possession limit (i.e., closure of the directed skate wing fishery) before the end of the fishing year. The possession limit analysis used by the Council was based on skate landing rates in 2010 and early 2011 when landing rates were particularly high. However, landing rates have slowed during 2011, and the wing fishery is not currently projected to harvest 100 percent of its 2011 TAL. Therefore, there may not be justification to reduce the skate wing possession limits for the 2012-2013 fishing years. This rule proposes to increase the skate bait possession limit because the bait fishery consistently under-harvested its quotas in 2010 and 2011. NMFS is requesting comment on whether or not these proposed possession limit changes should be implemented.

Based upon the results of the trawl survey vessel calibration, this rule proposes to update stock status determination criteria for skates. These updates include refinement of the survey strata used for determining the stock status of each skate species, as described in the EA for this action (see the ADDRESSES section of this proposed rule for how to obtain copies of the EA). The updates of stock status determination criteria also adjust the overfishing definition for clearnose skate. Overfishing would be deemed to be occurring if the 3-year moving average biomass of clearnose skate declines by 40 percent or more (compared to the current threshold of 30 percent), reflecting the higher coefficients of variation (i.e., variability in catch between individual survey tows) for this species with the new trawl survey vessel.

The specifications in this proposed rule also apply previously unaccounted for skate bait transfers at sea against the skate bait fishery quotas. Analysis indicates that bait transfers at sea,

on average, represent approximately 18 percent of total skate landings, and need to be considered when monitoring catch. Finally, in order to be consistent with the requirements of Amendment 3, this rule also proposes to remove a reference to Northeast multispecies sectors in the skate wing possession limit regulations found at § 648.322 (b). The skate wing possession limits were not intended to apply to sector vessels, and this reference should have been removed from the Amendment 3 final rule. This rule does not propose changes to any other regulations implemented by Amendment 3 or Framework Adjustment 1 (including inseason TAL triggers or incidental possession limits).

Table 1. No Action and Proposed 2012-2013 Skate ABC and Associated Catch Limits (mt).

	No Action	Preferred	Percent Difference
ABC	41,080	50,435	+23%
ACL	41,080	50,435	+23%
ACT	30,810	37,826	+23%
TAL	13,848	21,561	+56%
Wing TAL	9,209	14,338	+56%
Bait TAL	4,639	7,223	+56%
Assumed Discard Rate	52.0%	36.3%	-30%
Assumed State Landings	3.0%	6.7%	+123%

The proposed specifications are expected to maintain positive economic impacts for the fishery, such as the increases in skate revenues that resulted from implementation of the emergency rule, while also maintaining the conservation objectives of the Skate FMP. Although the landings of skate wings are expected to remain high under the proposed specifications, overall catch of skates will not likely be significantly affected due to the nature of the skate wing fishery, which is primarily an incidental fishery within the groundfish and monkfish fisheries. Under the no action alternative with lower quotas, once the possession limit trigger is reached,

skates that are caught in these primary fisheries above the incidental possession limit of 500 lb (227 kg) would be discarded. This proposed rule would enable fishermen to continue to retain and land for sale those skates that would otherwise have to be discarded.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY of this proposed rule. A summary of the IRFA follows. A copy of the complete IRFA analysis is available from the Council (see ADDRESSES).

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than \$4 million in annual sales, while the size standard for charter/party operators (NAICS code 487210) is \$7 million in sales. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single

small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this rule. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed increase in the skate ACL and TALs would impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery. According to the Framework 1 final rule and Final Regulatory Flexibility Analysis (76 FR 28328, May 17, 2011), as of December 31, 2010, the maximum number of small fishing entities (as defined by the SBA) that may be affected by this action is 2,607 entities (number of skate permit holders). However, during fishing year 2010, only 601 vessels landed any amount of skate.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

The purpose of annual fishery specifications is to ensure that management measures accurately reflect the best available scientific information. The proposed action represents the maximum catch limits that could be implemented under the approved Skate FMP and regulations. Alternatives with higher catch limits, that might provide increased fishing opportunities, were not considered because such alternatives would be inconsistent with the Magnuson-Stevens Act and the Skate FMP. Any other alternatives would provide fewer fishing opportunities than the proposed action; therefore, the IRFA analyzes only the proposed action and the no action alternative.

The purpose of the proposed action is to maintain the increased skate catch and landing limits of the emergency rule, thereby providing economic benefits to the fishery by continuing to extend the duration of the fishing season. This contrasts with the negative economic impacts that would be associated with the lower catch limits and potential fishery closures that would occur under the no action alternative. The proposed action is expected to maximize the short-term profitability for the skate fishery by continuing higher levels of landings for fishing years 2012 and 2013. It is also expected to minimize potential long-term economic impacts by implementing catch levels that are sustainable and that contribute to stock rebuilding. Therefore, the economic impacts resulting from the proposed action as compared to the no action alternative are positive.

The proposed action is almost certain to result in greater revenue from skate landings. Based on recent landing information, the skate fishery is able to land close to the full amount of skates allowable under the quotas. The estimated potential revenue from the sale of skates under the proposed catch limits is approximately \$9.8 million per year, compared to \$5.8 million if this action were not implemented. However, vessels that participate in the skate fishery derive most (an average of 96 percent) of their revenues from other fisheries (e.g., groundfish, monkfish). In fishing year 2010, the average total revenue (from all species combined) for the 601 vessels that landed skates was \$234,389, of which an average of \$17,042 was derived from skates. Therefore alterations to catch limits of other species would be expected to result in greater impacts on total

fishing revenues than would alterations in skate catch limits. The proportion of revenue derived from skates may change over time, as skate prices have begun increasing in recent years, and more vessels have been deriving a greater proportion of their income from skates.

Dated: February 15, 2012.

Alan D. Risenhoover, Acting Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.322, revise paragraph (b) introductory text, (b)(1) and (c)(4) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) Skate wing possession and landing limits. A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§648.53, 648.82, and 648.92, respectively, unless otherwise exempted under §648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 2,200 lb (998 kg) of skate wings (4,994 lb (2,265 kg) whole weight) per trip from May 1 through August 31, and 3,600 lb (1,633 kg) of skate wings (8,172 lb (3,707 kg) whole weight) per trip from September 1 through April 30, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27 – for example, 100 lb (45.4 kg) of skate wings X 2.27 = 227 lb (103.1 kg) of whole skates).

* * * * *

(c) * * *

(4) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

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